

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADRIAN BARRIE SMITH,

Plaintiff,

-against-

EMILY BLAVATNIK, *et al.*,

Defendants.
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ELECTRONICALLY FILED
DOC #:
DATE FILED: 10-17-14

14 Civ. 503 (PAC)(JLC)

**ORDER ADOPTING REPORT
& RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Adrian Barrie Smith alleges that Defendants Emily Blavatnik, Leonard Blavatnik, EB Household LLC, and Access Industries (collectively, “Defendants”) breached a contract with Plaintiff and engaged in employment discrimination when they turned away candidates provided by Plaintiff for domestic worker positions. Specifically, Plaintiff claims that Defendants’ butler refused to interview women for an available position, told Plaintiff Defendants did not want to interview “Philippine” candidates, and asked for profile pictures of candidates before agreeing to interview them. Defendants move to dismiss Plaintiff’s complaint for lack of subject matter jurisdiction, failure to state a claim, and because the doctrine of *res judicata* bars Plaintiff’s claims.

On July 30, 2014, Magistrate Judge James Cott issued a Report and Recommendation (“R & R”) on the motion, which summarizes in detail Plaintiff’s extensive litigation history. (See R & R at 2-4). With respect to the merits, the R & R recommends “that Defendant’s motion be granted and that Smith’s complaint be dismissed with prejudice.” (*Id.* at 1). First, Judge Cott

concludes that Plaintiff has failed to establish jurisdiction based on diversity, as the parties are not diverse and the amount in controversy does not exceed \$75,000. (*Id.* at 6-8). Judge Cott determines that the Court has federal question jurisdiction because Plaintiff's complaint alleges a claim under Title VII, 42 U.S.C. section 2000e *et seq.* (*Id.* at 8-9). Next, Judge Cott finds that Plaintiff failed to state a claim for employment discrimination, because Plaintiff did not file a charge with the EEOC; as a result, Plaintiff's claims are untimely; and Plaintiff does not have standing to bring a Title VII claim because he was not the victim of the alleged discrimination. (*Id.* at 10). In addition, Judge Cott finds that the doctrine of *res judicata* bars Plaintiff's claims, because these claims have been adjudicated in small claims court. (*Id.* at 11-14). Finally, Judge Cott recommends that Plaintiff be ordered to show cause why he should not be enjoined from filing further complaints without leave of the court, pursuant to 28 U.S.C. § 1651. (*Id.* at 14).

The Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). The Court may adopt those portions of the R & R to which no timely objection has been made, so long as there is no clear error on the face of the record. *Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). After being served with a copy of Magistrate Judge Cott's R & R, Plaintiff had fourteen days to file specific written objections to the proposed findings and recommendations. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Plaintiff's failure to file timely objections to the R & R results in waiver of those objections. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985). Thus, the Court reviews the R & R for clear error. Finding none, the Court hereby adopts the R & R in full.

Accordingly, Defendants' motion to dismiss is granted. The Clerk of the Court is directed to enter judgment in favor of Defendants and close this case.

Plaintiff is directed to file a letter of no more than three pages explaining why he should not be enjoined from filing any new civil action without leave of the Court by November 17, 2014.

Dated: New York, New York
October 17, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge

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